IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 8773 of 2004

Between:

1. The Director, I.M.S., A.P. Hyderabad.
2. The Superintendent, ESI Hospital, Vijayawada.

.... PETITIONERS

AND

Sri. V. Venkateswara Rao, Driver,
ESI Hospital, Vijayawada.

..... RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ or Order or direction more particularly one in the nature of Writ of Certiorari and to call for records connected with order dated 27-11-2003 in O.A.No.2420 of 1999 with M.A.No.3820/2003 on the file of Hon'ble A.P. Administrative Tribunal, Hyderabad and to quash or set aside the same as erroneous and contrary to law.

Counsel for the Petitioner: G.P. FOR SERVICES I

Counsel for the Respondent: Sri L. Balakrishna Rao.

The Court made the following:

ORDER **(per the Hon'ble Sri Justice Goda Raghuram)**:

The Writ Petition is filed by the State against the Order of the Andhra Pradesh Administrative Tribunal, Hyderabad, dated 27-11-2003 in O.A.No.2420 of 1999.

The respondent-applicant is an ambulance van driver of ESI hospital, Gunadala, Vijayawada. Aggrieved by the withholding of H.R.A. and additional H.R.A. and initiation of proceedings for recovery of these amounts already paid to him for some period, he filed O.A.No.2420 of 1999. The O.A. was allowed directing the petitioners to pay the H.R.A. and additional H.R.A. due to the applicant and also to refund the amount, if any, recovered from the applicant, within a period of three months from the date of receipt of the Order. Aggrieved by the same, this Writ Petition is filed.

The brief case of the applicant is that his father is a paralytic patient. He had been allotted a quarter in the 4th floor, which is leaking and as it is inconvenient to occupy the quarter on account of personal circumstances, he was continuing the stay in private accommodation. In the circumstances, the action of the respondents in seeking to recover the H.R.A. and additional H.R.A., which were already paid and withholding of these amounts in future is, arbitrary and illegal, is the contention. The Tribunal came to the conclusion that there was no provision enabling the State to withhold these amounts. This conclusion was arrived at despite the contention of the

Government on the basis of the provisions of G.O.Ms.No.107, Finance & Planning (FW.PRC.I) Department, dated 15-04-1988.

G.O.Ms.No.107 contains the consolidated Rules viz., the Andhra Pradesh Public Employment (House, Rent Allowance) Rules, 1988, (for short 'the Rules') issued under proviso to Article 309 of the Constitution of India. Rule 6 sets out the non-eligibility of the allowance to certain categories of Government Servants and under sub-rule 1 of Rule 6 of the Rules, the allowance shall not be admissible to those Government Servants, who are eligible for rent free quarters under the relevant Rules and are provided with such quarters.

It is not in dispute that the petitioner is eligible for
rent-free quarters and was provided with a quarter. He has volitionally chosen not to occupy the quarter for whatever reason. In the circumstances, he is not eligible for the allowance of H.R.A. and additional H.R.A. in view of Rule 6 of the Rules. The Petitioner had not chosen to assail the validity of the Rules before the Tribunal. The Rules are Statutory Rules and are binding.

On the analysis above, the order of the A.P. Administrative Tribunal is unsustainable and is accordingly set aside. The Writ Petition is allowed. The respondent is, however, at liberty to make a representation to the employer setting out his personal circumstances for seeking an alternative remedy or any other appropriate relief. If such representation is made, this Court is not in doubt that the same will receive due and appropriate consideration by the Writ Petitioner-State. No costs.

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J. CHELAMESWAR, J

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GODA RAGHURAM, J

3rd September, 2004

lsn/Pvks

To

1. The Director, I.M.S., A.P. Hyderabad.
2. The Superintendent, ESI Hospital, Vijayawada.

3. Two copies to G.P. for Services-I, High Court Buildings, Hyderabad (OUT).

4. Two CD copies